

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
HCT-00-CV-MA-0481-2008

1. JOHNSON MUGISHA }
2. NANKYA A. REGINA } APPLICANTS
3. JOHN BUWEMBO }
4. JAMES MUTUMBA }

Versus

KAMPALA CAPITAL CITY AUTHORITY RESPONDENT
(Formerly Kampala City Council)

And

STANBIC BANK }
DFCU BANK LTD } GARNISHEES

BEFORE: HON. JUSTICE STEPHEN MUSOTA

RULING

This is a ruling arising out of a preliminary point of law raised by the 1st Garnishee in an application for leave to appeal against the judgment of Hon. Lady Justice Elizabeth Musoke delivered on the 29th of September 2015. The application was brought under S. 33 of the

Judicature Act, S. 98 of the Civil Procedure Act and Order 44 rules 2, 3 and 4 of the Civil Procedure Rules.

Mr. Andrew Bwengye jointly with Mr. Justine Semuyaba appeared for the applicants while Mr. Denis Byaruhanga appeared for the respondent. Mr. Ferdinand Musimenta appeared for the 1st Garnishee.

The preliminary point of law is that the instant application is time barred and incompetent and should be struck out with costs to the 1st Garnishee. To support his submissions, learned counsel for the 1st Garnishee submitted that the position of the law is that an application for leave to appeal should be informally made immediately upon court pronouncing the order sought to be appealed as per the case of **Sango Bay Estates Ltd & Ors Vs Dresdner Bank [1971] EA 17.** That in default of making such an application for leave, the applicant had to do it in 14 days as per Rule 40 (2)(a) of the Judicature (Court of Appeal Rules) Directions SI 13-10.

Learned counsel further submitted that in this case the ruling in Misc. App. 290 of 2012 was delivered on 29th September 2015 as per Annexure "A" to the applicants' affidavit in support of the application. That although the applicants never made an informal application for leave to appeal, they filed this application on 13th November 2015 as evidenced by the Court Registry Stamp on the Notice of Motion. That this was 45 days from the date of the decision which is way beyond the 14 days provided under Rule 40 (2) (a) of the Judicature (Court of Appeal Rules) Directions SI 13-10. Learned counsel further submitted that there is no evidence on court record to show that the applicant obtained an extension of time or applied for the same. That when a law stipulates that an act be done within a specified time it is not a mere technicality and failure to comply will render the act done null and void or incompetent. Learned counsel relied on the case of **UNEB Vs Mparo General Contractors Court of Appeal Civil Reference No. 99 of 2003** and prayed that the application be found to be incompetent and be dismissed with costs to the 1st Garnishee.

In reply, learned counsel for the applicants disagreed with the submissions of learned counsel for the 1st Garnishee. He submitted that the interpretation of the law by learned counsel for the 1st garnishee appears to suggest that the use of the word ***shall*** in Rule 40 (2) (a) of the Judicature (Court of Appeal Rules) Directions SI 13-10 means that it is mandatory yet no sanction for non-compliance is provided for. Further that the application for leave to appeal in High Court can be filed any time even beyond the 14 days. Learned counsel also submitted that since there is no sanction provided for in the rules, then the expiry of 14 days is no ground for dismissing the application.

Learned counsel for the applicants further submitted that the law for filing formal applications for leave to appeal is under Order 44 rules 1 (2), (3) and (4) of the Civil Procedure Rules. That none of the applicants or their advocates were present in court on the day of the ruling. That the ***Sango Bay*** case relied on by learned counsel for the 1st Garnishee and also relied on the case of ***UNEB VS Mparo General [2004] KALR 433*** is distinguishable because they dealt with a Civil Reference and not an Application for leave to appeal which provides for two alternative procedures. Further that the 1st Garnishee will not be affected by the hearing of this application on merits since they were merely a custodian of funds.

In rejoinder learned counsel for the 1st Garnishee reiterated their submissions on the issue of whether or not there is a sanction. He added that failure to file an application within time prescribed by law renders the application incompetent and as such this court cannot turn a blind eye to an illegality as per the case of ***Makula International Ltd Vs His Eminence Cardinal Wamala Nsubuga [1982] HCB 11***. That Order 44 of the Civil Procedure Rules does not provide for the procedure of filing an application for leave to appeal. That the same is provided for under Rule 40 (2) of the Court of Appeal Rules.

I have carefully considered the submissions of both learned counsel. The law that governs applications for leave to appeal is provided for under Rule 40 (2) of the Court of Appeal Rules and not under Order 44 of the Civil Procedure Rules. Order 44 does not provide for the procedure of filing an application for leave to appeal against judgments.

Rule 40 (2) of the Court of Appeal Rules enacts that:

“where formerly an appeal lay from the High Court to the Supreme Court with leave of either the High Court or Supreme Court, the same rules shall apply to appeals to the Court –

(a) Where an appeal lies with leave of the High Court, application for the leave shall be made informally at the time when the decision against which it is desired to appeal is given; or failing that application or if the court so orders, by notice of Motion within fourteen days of the decision; and

(b) If the High Court refused to grant leave, or where an appeal otherwise lies with leave of the court, application for leave shall be lodged by Notice of Motion within fourteen days after the decision against which it is desired to appeal; and the decision of the court granting or refusing to grant leave is final.”

The above legal provision is very clear. I therefore agree with the submissions of learned counsel for the 1st Garnishee entirely. This application was supposed to be filed within 14 days from 29th September 2015 regardless of whether the applicants and their advocates were in court or not. Applications for leave to appeal to the Court of Appeal must first be made to the High Court. In the High Court the procedure is that it may be made orally immediately after judgment or ruling and if that is not possible or if the court directs so, a formal application can be made within fourteen days from the date of the decision. In the instant case this was not done. The limitations provided in the law must be complied with because it is a serious law and none compliance which is a serious issue. The law of limitation must be interpreted strictly because it provides for deadlines in litigation. This was not done in this case and instead learned counsel for the applicants waited for forty five days before he could file the application. This was

definitely outside the prescribed timelines within the law. I will therefore find that this application is incompetent for having been filed out of time without seeking for extension of time within which to file the application. Complying with timelines provided in the law is not a technicality.

For those reasons therefore, I will find merit in the preliminary point of law raised by learned counsel for the 1st Garnishee and strike out the application with costs to the 1st Garnishee.

I so order.

Stephen Musota

J U D G E

20.06.2016.